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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/334,415	06/16/1999	CLAUDE BASSO	FR9-98-048	5316
24267	7590	01/28/2004	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			JAGANNATHAN, MELANIE	
		ART UNIT	PAPER NUMBER	
		2666	17	
DATE MAILED: 01/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/334,415	BASSO ET AL.
	Examiner Melanie Jagannathan	Art Unit 2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11/12/2003, 12/16/2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-5 and 7-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3-5 and 7-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter of a computer readable media containing instructions for execution in a processor and electromagnetic signals propagating on a computer network comprising electromagnetic signals carrying instructions for execution on a processor is not supported by the specification and one skilled in the relevant art could not define the claimed subject matter as inherent to the system.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims **1,3,5,7-10,12-15,17-20,22,23** are rejected under 35 U.S.C. 102(e) as being anticipated by Hjalmysson et al U.S. 6,128,305.

Regarding claims **1,5, 9,14,19**, the claimed source node and destination node are anticipated by calling station (Figure 9, element 901) and called station (Figure 9, element 910). The claimed initiation of connection procedure through call setup message sent by source node to destination node and destination node sending back an acknowledgment message to source node is anticipated by calling station sending setup message (Figure 9, SETUP) to called station and called station sending back acknowledgment message (Figure 9, ACK) to calling station.

The claimed sending of verification data stream to destination node after receiving acknowledgment message and sending of response data stream back after receiving verification data stream to check characteristics of connection established between source node and destination node is anticipated by calling station sending quality of service message (Figure 9, QoS REQUEST), called station sending back quality of service commit message (QoS COMMIT) back, and calling station sending back acknowledgment message (QoS ACK) all in order to set up quality of service for connection after initial connection has been established.

Art Unit: 2666

Regarding claim **3,10,15,20**, the claimed asynchronous connection-oriented transmission network being ATM network is anticipated by establishment of connection in ATM network.

See column 1, lines 16-20.

Regarding claim **7,12,17,22**, the claimed check of end-to-end transit delay of connection is anticipated by connection setup for purposes of connectivity that minimizes end-to-end delay. See column 6, lines 28-48.

Regarding claim **8,13,18,23**, the claimed check bandwidth allocation is anticipated by QoS request and QoS commit messages sent to set up quality of service needed for connection which includes bandwidth allocation. See column 9, lines 40-67 and column 10, lines 1-9.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 4,11,16,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjalmysson et al. U.S. 6,128,305. Hjalmysson et al. disclose all the limitations of the claim except for use of frame relay network.

Therefore, examiner takes official notice of the concept and the advantage of implementing the signaling system of Hjalmysson et al. in a frame relay network. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use a frame relay network. One of ordinary skill in the art would be motivated to do this since the signaling system is adaptive to use with fixed length packets or with variable length packets.

***Response to Arguments***

7. Applicant's arguments filed 11/12/2003 have been fully considered but they are not persuasive.

Regarding claim 1, Applicant argues reference Hjalmysson does not disclose a means for sending a verification data stream to destination node after receiving acknowledgment message and means for sending back a response data stream after receiving verification data stream, the verification and response streams being used to check the characteristics of the connection previously established between source node and destination node.

Examiner contends reference Hjalmysson discloses a QoS request sent from calling station after it has received a setup acknowledgment from called station, the called station returning a QoS commit message allowing the calling station to send QoS data and additionally the calling station sends back a QoS acknowledgment message to the called station so the called

station may begin to transmit data that is assured of the quality of service. See Figure 9, and column 17, lines 1-23.

Applicant argues claim 1 teaches testing or checking the connection for "characteristics" and Hjalmysson has no disclosure of this by the source end station and destination end station through a communication there between using a verification data stream and response data stream. Applicant argues Hjalmysson discloses the destination end station simply reporting that the quality of service connection has been established and the source end station has no way of verifying that report. However, Examiner contends that Hjalmysson discloses the calling station requesting QoS, the called station sending commit message if it is determined by switches that request can be satisfied for connection and calling station can now send data assured of quality of service and also sending a QoS acknowledgment so the called station may begin to transmit data that is assured of the quality of service. See Figure 9, and column 17, lines 1-23.

Applicant argues on pages 13 and 14 of preliminary amendment Hjalmysson does not teach sending a call setup message over a connection which is already established and Hjalmysson only discloses how to set up connection and not how to test it after it has been set up. Examiner contends claim language reads "determining a best route between any source node and any destination node when a connection has to be established therebetween...based upon the requirement of quality of service...a source node can test the connectivity of a network connection from source node to destination node by initiating connection procedure wherein a call setup message is sent by CATMTA means of source node to destination node and DATMTA means of destination node send back acknowledgment message to source node and...means for sending a verification data stream to destination node... and means for sending back a response

Art Unit: 2666

data stream...verification and response data streams being used to check the characteristics of the connection previously established between source node and destination node. Hjalmysson discloses setup message being sent from calling station to called station, acknowledgment being sent back, the calling station sending QoS request, the called station sending commit message if it is determined by switches that request can be satisfied for connection and calling station can now send data assured of quality of service and also sending a QoS acknowledgment so the called station may begin to transmit data that is assured of the quality of service. See Figure 9, and column 17, lines 1-23.

### ***Conclusion***

This is a continuation of applicant's earlier Application No. 09/334415. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however,

Art Unit: 2666

event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Jagannathan whose telephone number is 703-305-8078. The examiner can normally be reached on Monday-Friday from 8:00 a.m.-4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 703-308-5463. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Melanie Jagannathan  
Patent Examiner  
AU 2666

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FRANK DUONG*